



STATE OF ARIZONA
Department of Health Services
NOTICE OF INVITATION FOR BID

**ARIZONA DEPARTMENT
OF HEALTH SERVICES**
1740 West Adams Street
Phoenix, Arizona 85007
(602) 542-1040
(602) 542-1741 Fax

SOLICITATION NUMBER:

HB861399

SOLICITATION DUE DATE/TIME:

June 6, 2008 3:00pm Local Time

SUBMITTAL LOCATION:

**Arizona Department of Health Services
Office of Procurement
1740 West Adams Street, Room 303
Phoenix, Arizona 85007**

DESCRIPTION:

HemoCue® Equipment and Service

In accordance with A.R.S. § 41-2533, competitive sealed bids for the services specified will be received by the Arizona Department of Health Services at the above specified location, until the time and date cited. Offers received by the correct time and date will be opened and the name of each offeror will be publicly read.

Offers must be in the actual possession of the Arizona Department of Health Services on or prior to the time and date, and at the location indicated above. Late offers will not be considered.

Offers must be submitted in a sealed envelope or package with the solicitation number and the offeror's name and address clearly indicated on the envelope or package. All offers must be completed in ink or typewritten. Additional instructions for preparing an offer are included in this solicitation.

With seventy-two (72) hours prior notice, persons with disabilities may request special accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Such requests are to be addressed to the solicitation contact person named below.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION

Solicitation Procurement Officer:

Pam Giroux

Arizona Department of Health Services

(602) 542-2944

girouxp@azdhs.gov

UNIFORM INSTRUCTIONS TO OFFERORS

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A. Definition of Terms. As used in these Instructions, the terms listed below are defined as follows:

1. *"Attachment"* means any item the Solicitation requires an Offeror to submit as part of the Offer.
2. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
3. *"Contract Amendment"* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
4. *"Contractor"* means any person who has a Contract with the State.
5. *"Days"* means calendar days unless otherwise specified.
6. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
7. *"Offer"* means bid, proposal or quotation.
8. *"Offeror"* means a vendor who responds to a Solicitation.
9. *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
10. *"Solicitation"* means an Invitation for Bids ("IFB"), a Request for Proposals ("RFP"), or a Request for Quotations ("RFQ").
11. *"Solicitation Amendment"* means a written document that is signed by the Procurement Officer and issued for the purpose of making changes to the Solicitation.
12. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
13. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.

B. Inquiries

1. **Duty to Examine.** It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its' Offer for accuracy before submitting the Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time, nor shall it give rise to any Contract claim.
2. **Solicitation Contact Person.** Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Solicitation contact person. The Offeror shall not contact or direct inquiries concerning this Solicitation to any other State employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.
3. **Submission of Inquiries.** The Procurement Officer or the person identified in the Solicitation as the contact for inquiries except at the Pre-Offer Conference, require that an inquiry be submitted in writing. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page and paragraph. Do not place the Solicitation number on the outside of the envelope containing that inquiry, since it may then be identified as an Offer and not be opened until after the Offer due date and time. The State shall consider the relevancy of the inquiry but is not required to respond in writing.

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4. **Timeliness.** Any inquiry or exception to the solicitation shall be submitted as soon as possible and should be submitted at least seven days before the Offer due date and time for review and determination by the State. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.
5. **No Right to Rely on Verbal Responses.** An offeror shall not rely on verbal responses to inquiries. A verbal reply to an inquiry does not constitute a modification of the solicitation.
6. **Solicitation Amendments.** The Solicitation shall only be modified by a Solicitation Amendment.
7. **Pre-Offer Conference.** If a pre-Offer conference has been scheduled under this Solicitation, the date, time and location shall appear on the Solicitation cover sheet or elsewhere in the Solicitation. Offerors should raise any questions about the Solicitation or the procurement at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment.
8. **Persons With Disabilities.** Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Solicitation contact person. Requests shall be made as early as possible to allow time to arrange the accommodation.

C. Offer Preparation

1. **Forms: No Facsimile, Telegraphic or Electronic Mail Offers.** An Offer shall be submitted either on the forms provided in this Solicitation or their substantial equivalent. Any substitute document for the forms provided in this Solicitation must be legible and contain the same information requested on the forms, unless the solicitation indicates otherwise. A facsimile, telegraphic, mailgram or electronic mail Offer shall be rejected if submitted in response to requests for proposals or invitations for bids.
2. **Typed or Ink; Corrections.** The Offer shall be typed or in ink. Erasures, interlineations or other modifications in the Offer shall be initialed in ink by the person signing the Offer. Modifications shall not be permitted after Offers have been opened except as otherwise provided under applicable law.
3. **Evidence of Intent to be Bound.** The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature (or acknowledgement for electronic submissions, when authorized) by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of an intent to be bound, such as an original signature, shall result in rejection of the Offer.
4. **Exceptions to Terms and Conditions.** All exceptions included with the Offer shall be submitted in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.
 - i. **Invitation for Bids.** An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.
 - ii. **Request for Proposals.** All exceptions that are contained in the Offer may negatively affect the State's proposal evaluation based on the evaluation criteria stated in the Solicitation or result in rejection of the Offer. An offer that takes exception to any material requirement of the solicitation may be rejected.
5. **Subcontracts.** Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
6. **Cost of Offer Preparation.** The State will not reimburse any Offeror the cost of responding to a Solicitation.

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7. Solicitation Amendments. Each Solicitation Amendment shall be signed with an original signature by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed copy of a Solicitation Amendment may result in rejection of the Offer.
8. Federal Excise Tax. The State of Arizona is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.
9. Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number in the space provided on the Offer and Acceptance Form.
- 9.1 Employee Identification. Offeror agrees to provide an employee identification number or social security number to the Department for the purposes of reporting to appropriate taxing authorities, monies paid by the Department under this contract. If the federal identifier of the offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.
10. Identification of Taxes in Offer. The State of Arizona is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be included in the pricing offered in the solicitation. At all times, payment of taxes and the determination of applicable taxes are the sole responsibility of the contractor.
11. Disclosure. If the firm, business or person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any Federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.
12. Solicitation Order of Precedence. In the event of a conflict in the provisions of this Solicitation, the following shall prevail in the order set forth below:
 - 12.1 Special Terms and Conditions;
 - 12.2 Uniform Terms and Conditions;
 - 12.3 Statement or Scope of Work;
 - 12.4 Specifications;
 - 12.5 Attachments;
 - 12.6 Exhibits;
 - 12.7 Special Instructions to Offerors;
 - 12.8 Uniform Instructions to Offerors.
 - 12.9 Other documents referenced or included in the Solicitation.
13. Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all freight, delivery and unloading at the destination(s).

D. Submission of Offer

1. Sealed Envelope or Package. Each Offer shall be submitted to the submittal location identified in this Solicitation. Offers should be submitted in a sealed envelope or container. The envelope or container should be clearly identified with name of the Offeror and Solicitation number. The State may open envelopes or containers to identify contents if the envelope or container is not clearly identified.
2. Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
3. Public Record. All Offers submitted and opened are public records and must be retained by the State. Offers shall be open to public inspection after Contract award, except for such Offers deemed to be confidential by the State.

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If an Offeror believes that information in its Offer should remain confidential, it shall indicate as confidential the specific information and submit a statement with its Offer detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise. The State shall determine whether the identified information is confidential pursuant to the Arizona Procurement Code.

4. Non-collusion, Employment, and Services. By signing the Offer and Acceptance Form or other official contract form, the Offeror certifies that:
 - i. The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
 - ii. The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable Federal, state and local laws and executive orders regarding employment.

E. Evaluation

1. Unit Price Prevails. In the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.
2. Prompt Payment Discount. Prompt payment discounts of thirty (30) days or more set forth in an Offer shall be deducted from the offer for the purposes of evaluating that price.
3. Late Offers. An Offer submitted after the exact Offer due date and time shall be rejected.
4. Disqualification. A Offeror (including each of its' principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall have its offer rejected.
5. Offer Acceptance Period. An Offeror submitting an Offer under this Solicitation shall hold its Offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for Offer acceptance, the number of days shall be one hundred-twenty (120). If a Best and Final Offer is requested pursuant to a Request for Proposals, an Offeror shall hold its Offer open for one hundred-twenty (120) days from the Best and Final Offer due date.
- 5.6 Waiver and Rejection Rights. Notwithstanding any other provision of the Solicitation, the State reserves the right to:
 - 5.6.1 Waive any minor informality;
 - 5.6.2 Reject any and all Offers or portions thereof; or
 - 5.6.3 Cancel the Solicitation.

F. Award

1. Number or Types of Awards. The State reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is most advantageous to the State. If the Procurement Officer determines that an aggregate award to one Offeror is not in the State's best interest, "all or none" Offers shall be rejected.
2. Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement Officer's signature on the Offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
3. Effective Date. The effective date of this Contract shall be the date that the Procurement Officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.

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G. Protests

A protest shall comply with and be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9 and rules adopted thereunder. Protests shall be in writing and be filed with both the Procurement Officer of the purchasing agency and with the State Procurement Administrator. A protest of a Solicitation shall be received by the Procurement Officer before the Offer due date. A protest of a proposed award or of an award shall be filed within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:

- 1.1 The name, address and telephone number of the protester;
- 1.2 The signature of the protester or its representative;
- 1.3 Identification of the purchasing agency and the Solicitation or Contract number;
- 1.4 A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- 1.5 The form of relief requested.

H. Comments Welcome

The State Procurement Office periodically reviews the Uniform Instructions to Offerors and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 104, Phoenix, Arizona, 85007.

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1. Bid Format

One (1) original and three (3) copies of each Invitation for Bid (“IFB”) shall be submitted. The original copy of the bid should be clearly labeled “ORIGINAL”, and all copies shall clearly state “COPY”. The State shall not provide any reimbursement for the cost of developing or presenting bids in response to this IFB.

2. References

Bidders shall submit the names and telephone numbers for contact of at least three (3) existing customers using the type of service requested. Bidders shall highlight references that are other state governments.

3. Required Information

The following items shall be submitted with each bid. Failure to include all of the items may result in bid being rejected.

a. Offer and Acceptance

b. Price Sheet

1. Complete the Price Sheet in its entirety. Be certain to list discounts offered and payment and delivery terms.

c. Complete contact information on page 24

4. Evaluation Criteria

In accordance with the A.R.S. § 41-2533, competitive sealed bidding, awards shall be made to the lowest responsible and responsive Bidder whose offer conforms in all material respects to the requirements and criteria set forth in the solicitation.

5. Responsibility Criteria

a. References

b. Bidders qualifications:

1. Minimum of five (5) years prior experience providing technical assistance with Hemocue products.

2. At least ten (10) years in business.

6 Federal Immigration Laws, Compliance by State Contractors

By entering into the Contract, the Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Contract. I-9 forms are available for download at USCIS.GOV

The State may request verification of compliance for any Contractor or subcontractor performing work under the Contract. Should the State suspect or find that the Contractor or any of its subcontractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

7. Offshore Performance of Work Prohibited

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or

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“overhead” services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

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- 1** **Definition of Terms.** As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:
- 1.1 **“Attachment”** means any item the Solicitation requires the Offeror to submit as part of the Offer.
- 1.2 **“Contract”** means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3 **“Contract Amendment”** means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4 **“Contractor”** means any person who has a Contract with the State.
- 1.5 **“Days”** means calendar days unless otherwise specified.
- 1.6 **“Exhibit”** means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7 **“Gratuity”** means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8 **“Materials”** means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9 **“Procurement Officer”** means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10 **“Services”** means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.11 **“Subcontract”** means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- 1.12 **“State”** means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.13 **“State Fiscal Year”** means the period beginning with July 1 and ending June 30,
- 2** **Contract Interpretation**
- 2.1 Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
- 2.3.1 Special Terms and Conditions;
- 2.3.2 Uniform Terms and Conditions;
- 2.3.3 Statement or Scope of Work;
- 2.3.4 Specifications;
- 2.3.5 Attachments;

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- 2.3.6 Exhibits;
- 2.3.7 Documents referenced or included in the Solicitation.
- 2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6 No Parol Evidence . This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 3 Contract administration and operation.**
- 3.1 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6 Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a

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result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of the contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

4 Costs and Payments

- 4.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2 Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3 Applicable Taxes.
 - 4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
 - 4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
 - 4.3.3 Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
 - 4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current IRS W9 Form on file with the State of Arizona, unless not required by law.
- 4.4 Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5 Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
 - 4.5.1 Accept a decrease in price offered by the, contractor
 - 4.5.2 Cancel the Contract
 - 4.5.3 Cancel the contract and re-solicit the requirements.

5 Contract changes

- 5.1 Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made

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unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

- 5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3 Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6 Risk and Liability

- 6.1 Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2 Indemnification
- 6.2.1 Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its' departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its' departments, agencies, boards and commissions shall be responsible for its' own negligence. Each party to this contract is responsible for its' own negligence.
- 6.2.2 Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its' officers, officials, agents, employees, or volunteers."
- 6.3 Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.
- 6.4 Force Majeure.
- 6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- 6.4.2 Force Majeure shall not include the following occurrences:
- 6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

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- 6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
- 6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.4.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- 6.4.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
- 6.5 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7 Warranties

- 7.1 Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:
 - 7.2.1 Of a quality to pass without objection in the trade under the Contract description;
 - 7.2.2 Fit for the intended purposes for which the materials are used;
 - 7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 7.2.4 Adequately contained, packaged and marked as the Contract may require; and
 - 7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3 Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5 Year 2000.
 - 7.5.1 Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of *force majeure* shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.
 - 7.5.2 Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this Contract properly exchanges date-time data with it. If this Contract requires that the information technology products being acquired perform as a system, or that the information technology products

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being acquired perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this Contract. In addition, the defense of *force majeure* shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.

- 7.6 Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.
- 7.7 Survival of Rights and Obligations after Contract Expiration or Termination.
- 7.71 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- 7.7.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8 State's Contractual Remedies

- 8.1 Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2 Stop Work Order.
 - 8.2.1 The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
 - 8.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3 Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.
- 8.4 Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5 Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

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9 Contract Termination

- 9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5 Termination for Default.
- 9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- 9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.
- 9.6 Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10 Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

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11 Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes.

12 Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 104, Phoenix, Arizona, 85007.

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1. Purpose

Pursuant to provisions of the Arizona Procurement Code, A.R.S. ' 41-2501 Et Seq., Arizona Department of Health Services intends to establish a contract to provide HemoCue® products and service in accordance with the terms and conditions outlined in this IFB.

2. Term of Contract (3 Years)

The term of the resultant contract shall commence upon award of and signature by the Chief Procurement Officer, and shall remain in effect for three (3) years, unless terminated, canceled, or extended as otherwise provided herein.

3. Contract Extension

By mutual written contract amendment, any resultant contract may be extended yearly for twelve (12) months. The total contract term, including extensions, shall not exceed a total of five (5) years from the effective date of the contract.

4. Contract Type

☒ Fixed Price

5. Price Increase/Price Decrease

Contractor prices accepted and subsequently awarded by a contract in response to this IFB shall remain in effect for a minimum of one (1) year. The Contractor may request a price adjustment, but the State will not review or approve an increase until the contract has been in effect for one (1) year. The Arizona Department of Health Services will review any requested rate increase to determine whether such request is reasonable in relation to increased supplier or material costs. Contractor shall provide written justification for any price adjustment requested. Any price increase adjustment, if approved, will be effective upon execution of a written contract amendment.

Likewise, the Contractor shall offer the State a price adjustment reduction concurrent with reduced costs from their suppliers. Price reductions will become effective upon execution of a contract amendment.

6. Shipping – FOB Destination

Prices shall be F.O.B. destination to the delivery location designated herein. Contractor shall retain title and control of all goods until they are delivered and the contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. The Department will notify the contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.

7. Delivery (10 working days)

Delivery shall be made within **ten (10) working days** after receipt of order, unless other delivery dates are required to meet the needs of the Program. Orders will be placed by a representative of the Arizona Department of Health Services (ADHS) referencing a purchase order number issued by the Procurement Office.

8. Payment

All invoices shall include delivery time and contractual payment terms. Items are to be identified by the name, product number, contract number, line item number, and serial number if applicable. Any contract release order issued by the requesting agency shall refer to the contract number and line item number(s).

9. Authorization for Purchase of Services

Authorization for purchase of services under this contract shall be made only upon ADHS issuance of a Purchase Order that is signed by an authorized agent. The Purchase Order will indicate the contract number and the dollar

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amount of funds authorized. The Contractor shall only be authorized to perform services or provide materials up to the amount on the Purchase Order. ADHS shall not have any legal obligation to pay for services or materials in excess of the amount indicated on the Purchase Order. No further obligation for payment shall exist on behalf of ADHS unless; a) the Purchase Order is changed or modified with an official ADHS Procurement Change Order, and/or b) an additional Purchase Order is issued for purchase of services or materials under this contract.

10. Product Discontinuance

In the event that a manufacturer discontinues a product or groups of products, the State at its sole discretion may allow the contractor to provide substitutes for the discontinued product(s) or allow the deletion of such products from the contract. The request may be submitted at any time during the contract period and shall be supplemented with the following information. Failure to supply any of the following information with the request may result in the state not considering the request.

- a. A formal announcement from the manufacturer stating that the product(s) have been discontinued.
- b. Documentation from the manufacturer that cites the effected products by item number and description.
- c. Documentation from the manufacturer that names the replacement product(s).
- d. Documentation that provides clear evidence that the replacement product(s) meets or exceeds the specifications of the discontinued product(s) while remaining in the same product group(s) as the discontinued item, and;
- e. Documentation confirming that the price for the replacement product(s) is the same as or less than the discontinued item.

Approval shall be in the form of a contract amendment and shall become effective on the date specified in the amendment. Upon approval by the state, the contractor shall make available all electronic and hard catalog/price list updates to all eligible at no additional cost to the State.

11. Equipment Options

A request for the addition of options to particular machines may be submitted at any time during the Contract period. The State of Arizona, at its own discretion, may accept a request for the addition of options. The Contractor shall submit, in writing, a request for the addition of options and provide the following:

- a. Documentation showing that the option was:
 - 1) Not available for the contract machine at the original time of bid and has not been available for more than thirty (30) days prior to the request, or;
 - 2) The option is made available due to a model substitution.
- b. The option is priced at a similar discount to the original options at the original time of bid. Manufacturer's price lists and Contractor pricing data shall be submitted as documentation.
- c. The option is an enhancement to the machine that will be beneficial to the state and does not significantly hinder the original performance of the machine, as determined by the state.

The option does not change the original requirements of the category for which the machine was awarded, as determined by the state. All additions of options shall become effective upon approval of the state.

12. New/Additional Equipment

The Arizona Department of Health Services and the potential Contractor may, via mutually agreed written contract amendment, request the incorporation of additional equipment to the contract for service or repair. Pricing for additional equipment shall be commensurate with existing prices/discounts on the contract Price Sheet.

13. Licenses

The Contractor shall obtain and maintain in current status, all required federal, state, county, city and local licenses, permits or certifications for the Contractor, their employees and Subcontractors required for the

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operation of the business conducted by the Contractor. Within ten (10) days of contract award, the Contractor shall provide a list of all licenses and certifications they hold.

14. Non-Exclusive Contract

Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary, or when determined to be in the best interest of the State.

15. Information Disclosure

The Contractor shall establish and maintain procedures and controls that are acceptable to the State for the purpose of assuring that no information contained in its records or obtained from the state or from others in carrying out its functions under the contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information should be referred to the State. The Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the contractor as needed for the performance of duties under the contract, unless otherwise agreed to in writing by the State.

16. Employees of the Contractor

All employees of the Contractor employed in the performance of work under the contract shall be considered employees of the Contractor at all times, and not employees of the Arizona Department of Health Services, or the state. The Contractor shall comply with the Social Security Act, Workman's Compensation laws and Unemployment laws of the State of Arizona and all State, local and Federal legislation relevant to the Contractor's business.

17. Key Personnel

It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract. The Contractor must assign specific individuals to the key positions.

- a. The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without written notice to the state.
- b. If key personnel are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the state, and shall, subject to the concurrence of the state, replace such personnel with personnel of substantially equal ability and qualifications

18. Federal Immigration Laws, Compliance by State Contractors

By entering into the Contract, the Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Contract. I-9 forms are available for download at USCIS.GOV

The State may request verification of compliance for any Contractor or subcontractor performing work under the Contract. Should the State suspect or find that the Contractor or any of its subcontractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

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19. Offshore Performance of Work Prohibited

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

20. Indemnification Clause

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

21. Insurance Requirements

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

A. Minimum Scope and Limits of Insurance: Contractor shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000
• Fire Legal Liability	\$ 50,000
• Each Occurrence	\$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and***

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its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor".

- b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
- a. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor."***

3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, and when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

B. Additional Insurance Requirements: The policies shall include, or be endorsed to include, the following provisions:

1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. Notice of Cancellation: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to **The Arizona Department of Health Services, 1740 West Adams, Phoenix, AZ 85007** and shall be sent by certified mail, return receipt requested.

D. Acceptability of Insurers: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. Verification of Coverage: Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

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All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to **The Arizona Department of Health Services, 1740 West Adams, Phoenix, AZ 85007**. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**

- F. Subcontractors:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies **or** Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. Approval:** Any modification or variation from the *insurance requirements* in this Contract shall be made by the Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.
- H. Exceptions:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

22. **Health Insurance Portability and Accountability Act of 1996**

If applicable, the State may require the Contractor and any Subcontractor's to attest to the following:

The Contractor warrants that it is familiar with the requirements of HIPAA and HIPAA's accompanying regulations and will comply with all applicable HIPAA requirements in the course of this contract. Contractor warrants that it will cooperate with the State in the course of performance of the contract so that both the State and Contractor will be in compliance with HIPAA, including cooperation and coordination with the State's privacy officials and other compliance officers required by HIPAA and its regulations. Contractor will sign and date any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including, but not limited to, individualized Business Associate Agreements.

If requested by the State, Contractor agrees to sign the State agency's confidentiality statement and to abide by the statements in the form addressing the creation, use and disclosure of confidential information, including information designated as protected health information and all other sensitive information. In addition, Contractor agrees to attend or participate in HIPAA training offered by the State or to provide written verification that the Contractor has attended or participated in job related HIPAA training that is: (1) intended to make the Contractor proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA privacy officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the State agency's HIPAA Privacy Compliance Officer.

23. **Pandemic Contractual Performance**

The State shall require a written plan that illustrates how the Contractor shall perform up to contractual standards in the event of a pandemic. The State may require a copy of the plan at anytime prior to or post award of a contract. At a minimum, the pandemic performance plan shall include:

- a. Key succession and performance planning if there is a sudden significant decrease in Contractor's workforce.
- b. Alternative methods to ensure there are products in the supply chain.
- c. An up to date list of company contacts and organizational chart.

<p style="text-align: center;">SPECIAL TERMS AND CONDITIONS SOLICITATION NO: HB861399</p>

In the event of a pandemic, as declared by the Governor of Arizona, U.S. Government or the World Health Organization, which makes performance of any term under this Contract impossible or impracticable, the State shall have the following rights:

- d. After the official declaration of a pandemic, the State may temporarily void the Contract(s) in whole or specific sections, if the Contractor cannot perform to the standards agreed upon in the initial terms.
- e. The State shall not incur any liability if a pandemic is declared and emergency procurements are authorized by the Director as per A.R.S. 41-2537 of the Arizona Procurement Code.
- f. Once the pandemic is officially declared over and/or the Contractor can demonstrate the ability to perform, the State, at its sole discretion, may reinstate the temporarily voided Contract(s).

SPECIFICATIONS

SOLICITATION NO: HB861399

1. BACKGROUND:

The federally funded WIC Program requires that hemoglobin values are obtained from WIC applicants to determine nutritional risk for anemia. For more than 10 years, the Arizona WIC Program local agencies have used the HemoCue® analyzers and their cuvettes because of their reliability and simplicity of use by WIC staff in the clinics statewide. In 2004, a new generation of HemoCue® analyzers were purchased that has data management capabilities to assist in quality assurance. These analyzers are now networked into an ADHS computer server for download of Hemoglobin values. The Program staff reviews this data for quality assurance.

To take advantage of economies of scale and ensure that the funds are used for such purpose, the Arizona Department of Health Services (ADHS) WIC Program provides the HemoCue® analyzers, other ancillary equipment, and HemoCue® cuvettes to local agencies.

2. OBJECTIVE:

The Arizona WIC Program is required to test applicants to determine their hemoglobin value and risk of anemia. The HemoCue® system has been selected for use in Arizona WIC Clinics to test and report participant hemoglobin values and meet all federal eligibility criteria.

3. SPECIFICATIONS:

A. Equipment: All equipment must be specifically the HemoCue® brand.

1. HemoCue® Analyzers, Model Number Hb201 DM Systems #121135
2. Primary Docking Stations for the HemoCue® Analyzers #139075
3. Secondary Docking Stations for the HemoCue® Analyzers #139076
4. HemoCue® Microcuvettes with at least a minimum of 18 months expiration date from date of shipment #111710
5. USB Cables #139065
6. Lan Cable #131051
7. Soft Carrying Case #651955
8. Hard Carrying Case #189011 with interior Fitting #189021
9. PC Software #131062-V3.1
10. AC Power Adapter #131048

In addition to these items, the following services MUST be included as an integral part of this bid.

B. Services:

1. The bidder must provide a toll-free number for local agency staff to call for technical assistance from 7am to 5pm, MST. The toll-free number should have the capability of letting local agency staff leave messages and receive a response within 24 hours, except during weekends. In this case, any calls received after 5pm Fridays through Sundays, will have a response by Monday or in case of a holiday, by the next working day.
2. Repairs – The bidder must have the ability to repair the HemoCue® equipment, send a loaner within 24 hours if equipment has to be sent back to the company for repair, provide call tags for local agencies or State to send malfunctioning equipment, and to replace equipment within the warranty period at no extra cost to the State.
3. Provide data management software updates as they are made available by the manufacturing company.
4. Provide an annual training of HemoCue® equipment to State and/or local agencies or whenever software is updated.

4. REQUIREMENTS:

1. Shipments: ADHS reserves the right to randomly sample shipment(s) received and reject shipment(s) that do not meet specifications.
2. Guarantee: Contractors shall guarantee their product. Any product received damaged or unusable shall be replaced by the Contractor at no additional cost to the State.
3. Packaging: All items must be delivered in the manufacturer's standard package.

<div style="text-align: center;">SPECIFICATIONS SOLICITATION NO: HB861399</div>

4. Product Return: Contractor shall accept any or all unused product(s), in their original container or package, for exchange or credit at the current Contract price during the term of this Contract with no restocking fee. All product(s) will be returned in a timely manner during the period of the Contract. Proof of purchase will be attempted, but shall not be required. A full refund shall be issued for all unused product(s) returned to the Contractor up to ninety (90) days after Contract expiration. A credit may be issued only if there is an existing sale pending. Credit will not be accepted after Contract expiration. The Contractor shall issue a check for full reimbursement to the ADHS.

Special order items may be returned with a restocking fee.

5. Inventory: ADHS has an ongoing requirement for the material indicated in this solicitation. It is an express condition of any award that a Contractor shall maintain a reasonable stock on hand for delivery to the requesting agency. Failure to maintain such a stock may result in cancellation.
6. Defective Products: All defective products shall be replaced and exchanged by the Contractor. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the Contractor. All replacement products must be received by the state within seven (7) days of initial notification.

5. ADDITIONAL REQUIREMENTS AT CONTRACT AWARD:

Items to be provided by the Contractor as required under the Special Terms and Conditions within ten (10) days of contract award.

- a. Certificate of Liability Insurance

6. NOTICES, CORRESPONDENCE, REPORTS, INVOICES AND PAYMENTS:

- a. Invoices shall be submitted to ADHS on a monthly basis within thirty (30) days after the end of each month.
- b. Invoices shall be paid by ADHS within thirty (30) days following receipt of an approved invoice. In the case of any dispute regarding part of any invoice, ADHS shall pay the undisputed part according to the payment terms described above.
- c. Notices, Correspondence, Reports and Payments from ADHS to the Contractor shall be sent to:

Contractor: _____

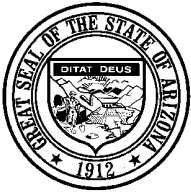
Address: _____

Address: _____

City, State, Zip: _____

- d. Notices, Correspondence, Reports and Payments from the Contractor shall be sent to:

Community Services Team Manager
Bureau of USDA Nutrition Programs
Arizona Department of Health Services
150 N. 18th Ave., Suite 310
Phoenix, AZ 85007



OFFER AND ACCEPTANCE

SOLICITATION NO: HB861399

**ARIZONA DEPARTMENT
OF HEALTH SERVICES**
1740 West Adams Street
Phoenix, Arizona 85007
(602) 542-1040
(602) 542-1741 Fax

Submit this form with an original signature to the:

**Arizona Department of Health Services
Office of Procurement
1740 West Adams, Room 303
Phoenix, Arizona 85007**

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the solicitation.

Arizona Transaction (Sales) Privilege Tax License No:

For Clarification of this Offer, Contact:

Federal Employer Identification No:

Name: _____

Telephone: _____

FAX: _____

Company Name

Signature of Person Authorized to Sign Offer

Address

Printed Name

City, State, ZIP Code

Title

OFFER ACCEPTANCE AND CONTRACT AWARD (For State of Arizona Use Only)

Your Offer is hereby accepted as described in the Notice of Award. The Contractor is now bound to perform based upon the Solicitation and the Contractor's Offer as accepted by the State.

This Contract shall henceforth be referred to as Contract Number: **HB861399**

The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until the Contractor receives an executed purchase order or contract release document or written notice to proceed, if applicable.

State of Arizona

Awarded this _____ day of _____, 2008

CHIEF PROCUREMENT OFFICER

ATTACHMENT 1
Solicitation HB861399

PRICE SHEET

Description	Estimated Annual Usage	Unit of Measure	Price
Analyzers HemoCue® Hb201 DM Systems Number 121135	10	\$ _____ each	
Primary Docking Stations HemoCue® Number 139075	10	\$ _____ each	
Secondary Docking Stations HemoCue® Number 139076	2	\$ _____ each	
Microcuvettes HemoCue® Number 111710	437,500	\$ _____ each	
USB Cables HemoCue® Number 139065	10	\$ _____ each	
Lan Cable HemoCue® Number 131051	10	\$ _____ each	
Soft Carrying Case HemoCue® Number 651955	5	\$ _____ each	
Hard Carrying Case HemoCue® Number 189019 with Interior Fitting Number 189021	5	\$ _____ each	
PC Software HemoCue® Number 131062-V3.1	10	\$ _____ each	
AC Power Adapter Number 131048	10	\$ _____ each	
Training		\$ _____ per hour	
Repair Service	25	\$ _____ per hour	
Repair Parts shall be provided at a discount off Manufacturers price list. A parts price list shall be provided with the bid.		% _____ discount	
Additional Equipment and Consumable Products shall be offered at a discount off Manufacturers price list. A price list shall be provided with the bid		% _____ discount	
Terms are _____ % Net _____ days; net 30 days (fill in prompt payment discounts if offered)			
Delivery of all equipment and supplies shall be provided _____ days ARO. FOB Destination.			

AUTHORIZATION FOR PROVISION OF SERVICES:

Authorization for purchase of services under this contract shall be made only upon ADHS issuance of a Purchase Order that is signed by an authorized agent. The Purchase Order will indicate the contract number and the dollar amount of

ATTACHMENT 1
Solicitation HB861399

funds authorized. The Contractor shall only be authorized to perform services up to the amount on the Purchase Order. ADHS shall not have any legal obligation to pay for services in excess of the amount indicated on the Purchase Order.

No further obligation for payment shall exist on behalf of ADHS unless; a) the Purchase Order is changed or modified with an official ADHS Procurement Change Order, and/or b) an additional Purchase Order is issued for purchase of services under this contract.

Please check as many as applicable:

____ I certify that my company is a Woman-Owned Business Enterprise (WBE).

A WBE is defined as an enterprise where a woman owns at least fifty-one percent (51%) of the business. The owner(s) must have the day-to-day control of the firm and have experience and expertise in the firm's primary area of operation. The owner(s) must hold a proportionate share of the business capital, assets, profits and losses commensurate with their ownership interest.

____ I certify that my company is a Minority-Owned Business Enterprise (MBE).

An MBE is defined as an enterprise where an ethnic minority owns at least fifty-one percent (51%) of the business. The owner(s) must have the day-to-day control of the firm and have experience and expertise in the firm's primary area of operation. The owner(s) must hold a proportionate share of the business capital, assets, profits and losses commensurate with their ownership interest.

____ I certify that my company is a Small Business.

A Small Business is defined as a company having fewer than one hundred (100) employees or less than four million dollars (\$4,000,000) in gross receipts.